Calendar No. 1273

98TH CONGRESS
2d Session

SENATE

REPORT
98-641

SAFE DRINKING WATER ACT AMENDMENTS OF 1984

SEPTEMBER 28 (legislative day, SEPTEMBER 24), 1984.—Ordered to be printed

Mr. DURENBERGER, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2649]

The Committee on Environment and Public Works, to which was referred the bill (S. 2649) to amend the Safe Drinking Water Act (title XIV of the Public Health Service Act) to authorize funds for fiscal years 1984, 1985, 1986, and 1987, 1988, 1989, and for other purposes having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

GENERAL STATEMENT

The amendments to the Safe Drinking Water Act of 1974 in S. 2649, as amended, establish schedules and procedures for the setting of national primary drinking water standards, modify public water system requirements, augment underground waste injection control requirements, and establish a critical aquifer demonstration program.

During this session of Congress, the Subcommittee on Toxic Substances and Environmental Oversight held three hearings on the provisions of S. 2649 at which the views of environmentalists, public water supply industry representatives, State regulators, industry and the Environmental Protection Agency were heard. Witnessess expressed their agreement that statutory improvements are necessary to achieve the objectives of the Act. Most of the substantive provisions of the bill received general support from the sectors represented.

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Purpose and Background

The Safe Drinking Water Act was enacted in 1974 to address the problem of contamination of public water systems by synthetic organic chemicals. These chemicals had been detected in the water supplies of a number of major cities. The primary purpose of the Act was to establish a national program of compliance with drinking water standards for contaminants that may have any adverse effect on the health of persons. As an addition to the Public Health Act, the Safe Drinking Water Act focused on the removal of contaminants found in water supplies as a preventive health measure.

The Act has been successful in effecting widespread compliance with basic drinking water standards. Nevertheless, current data indicates that some systems are subject to contamination by bacterial and viral agents and hundreds of synthetic organic chemicals.

Provisions in Part C of the Safe Drinking Water Act establish restrictions on the underground injection of hazardous and non-hazardous waste to protect underground sources of drinking water. Ground water resources currently supply drinking water for approximately 50 per cent of the U.S. population. These provisions were included in recognition of the fact that the best means of assuring present and future supplies of safe drinking water is to protect the sources from contamination.

The amendments in S. 2649 were developed to rectify some major deficiencies in existing programs established under the Act. The primary problem with the public water system program is the failure of the Environmental Protection Agency to set standards for contaminants which are found in public water systems and may have an adverse effect on human health. The bill establishes a new procedure for setting standards based on best available technology and sets reasonable deadlines for their issuance.

Monitoring is presently required only for those contaminants for which standards exist. Detection of synthetic organic chemicals, for which there are no standards, has occurred on an accidental basis. Therefore, a monitoring program for unregulated contaminants is established by the amendments to provide a check on the quality of each public water system's supply.

The ground water protection amendments would modify restrictions placed on the injection of hazardous waste for the purpose of enhancing existing protection of underground sources of drinking water. In addition, a program is established for the purpose of demonstrating effective means of protecting critical areas within designated sole or principal source aquifers.

Section-by-Section Analysis and Committee Views

Section 1. Short title

Section 2. Declaration of goals and policy

Unlike some environmental statutes, the Safe Drinking Water Act of 1974 does not contain a clear statement of goals and policies. S. 2649 adds a new section to the Act, setting forth the national policies and goals of assuring safe drinking water to the nation's population; protecting underground sources of drinking water; and

recognizing the appropriate Federal and State roles in achieving these goals.

Section 3. National primary drinking water regulations

Interim and revised standards

EPA promulgated interim drinking water regulations in 1975, derived from U.S. Public Health Service guidelines issued in 1962. The Agency was required to revise these standards by 1977 based on the health effects recommendations of the National Academy of Sciences. Revised standards have been set only for two contaminants—trihalomethanes and radionuclides.

The Act, as amended, would delete the requirement that EPA issue Revised National Primary Drinking Water Regulations. In addition, the interim and revised regulations distinction is removed and the national interim primary drinking water regulations are deemed to be a national primary drinking water regulations. The former "interim regulations" need not comply with the new requirements set forth in amendments to section 1412(b)(2) until those regulations are amended to establish different maximum contaminant levels.

Maximum contaminant level goals

The bill makes a change in terminology used in the Act. The term for the health-based standards—currently called Recommended Maximum Contaminant Levels (RMCLs)—is changed to maximum contaminant level goals. This is not a change in substance, but rather a clarification of the distinction between RMCLs and Maximum Contaminant Levels (MCLs).

The amendments modify the existing standard-setting procedures by requiring that maximum contaminant level goals and national primary drinking water regulations be proposed simultaneously and promulgated simultaneously. This change is intended to expedite rule-making procedures. The bill makes a number of other changes intended to require timely issuance of standards for those contaminants which may have an adverse effect on health of persons.

Standard-setting deadlines

Three major new deadline provisions require regulation of potentially hazardous contaminants in drinking water. First, within 18 months, the Administrator is required to review 14 organic contaminants listed in the Advance Notice of Proposed Rulemaking published in March, 1982, and establish national primary drinking water regulations for those, which, in the Administrator's judgment, may have any adverse effect on health. If the Administrator determines that regulation is not justified under this standard, considering all evidence bearing on health effects, he must publish this determination in the Federal Register. Second, within 36 months of enactment, the Administrator must similarly address the over sixty organic, inorganic, microbial, and radionuclide contaminants listed in the Advance Notice of Proposed rulemaking published in October, 1983. Third, on January 1, 1988, and at annual intervals thereafter, the Administrator must publish a list of priority con-

taminants for regulation. The Administrator must establish maximum contaminant levels for these contaminants within three years or determine that regulation is not justified under the statutory standard.

The Administrator is required to establish maximum contaminant level goals and national primary drinking water regulations for those contaminants which, in the Administrator's judgment, may have any adverse effect on the health of persons. This standard is intended to be protective of public health. The Agency is expected to regulate any contaminant which meets the criteria, even if the contaminant is not listed under the three deadline provisions.

Standard-setting basis

Under the three deadline provisions, the Administrator is to regulate within the alloted time unless he makes and publishes a determination that, in his judgment, regulation is not justified under the "may have any adverse health effect" criterion. The basis for this determination must be explained. Where scientific evidence is not conclusive, the Act requires the Administrator to resolve uncertainties in favor of protection of public health. One instance in which the Administrator would be justified in not regulating is if the contaminant is not found and is not likely to be found in public water systems. The Administrator's decision not to regulate is reviewable by the Court of Appeals.

Maximum contaminant levels

In order to expedite standard-setting the bill modifies the existing method under current law of establishing a maximum contaminant level (MCL). MCLs must be set as close to the maximum contaminant level goal as is feasible. The term "feasible" means feasible with the use of the best technology, treatment techniques and other means, which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). The bill makes clear that the use of granular activated carbon is available (taking costs into consideration) for the control of synthetic organic chemicals. Any technology, treatment technique, or other means found to be the best available for the control of synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as the use of granular activated carbon.

During the course of the hearings, the Committee heard testimony from witnesses representing the water supply industry, the Environmental Protection Agency, and public health interests that granular activated carbon technology, as used in well-operated public system has been proven to be highly effective in removing synthetic organic chemicals. The testimony indicates that the technology is not only proven but is available and economically feasible for many public water systems.

The Committee recognizes that other technologies, including aeration and adsorptive resins, exist which may be equally effective or more effective than the use of granular activated carbon under certain conditions. The relative effectiveness of technologies varies according to the specific parameters of technology design and oper-

ation and the nature of the contaminant. The use of technologies which are more effective than granular activated carbon under some circumstances is not precluded as the basis for setting MCLs.

The Administrator will not require public water systems to install the specific "best available technology" used to derive the MCL but will list other technologies which might be used to attain the MCL. Public water systems may use those or alternative technologies found equally effective, to come into compliance with the MCL standard.

Treatment technique requirements

In addition to modifying the basis for setting maximum contaminant level standards, the bill also includes treatment technique requirements for public water systems. This requirement is intended to ensure that all systems are providing basic public health protection. Section 1412(b)(3)(C) requires the Administrator to propose and promulgate regulations requiring that all public water supplies using surface water be treated by processes such as filtration (and coagulation and sedimentation, if appropriate), or an equivalent, prior to disinfection unless it can be shown that such treatment is not necessary. The Committee recognizes that some public water systems are able to provide public health protection comparable to that provided by filtration through a combination of other treatment and non-treatment means including protection of the watershed. This section provides the Administrator authority to grant variances from this requirement according to the provisions under Sections 1415(a)(1)(B) and 1415(a)(3) if the system shows that the treatment is not needed to provide equivalent health protection. The Administrator is required to specify the criteria to be used in granting variances before the filtration requirements go into effect. The requirement in current law for public participation in any variance proceeding will be applicable to filtration variance procedures.

EPA is also required to propose and promulgate regulations requiring that all public water systems disinfect their water supplies unless they can show that there is no need to do so. The Administrator is provided authority to grant variances from this requirement in accordance with Section 1415(a)(1)(B) and 1415(a)(3). EPA is required to issue criteria for those systems which do not need to disinfect for purposes of public health protection and should receive variances. EPA must issue such criteria prior to implementation of disinfection regulations.

Section 4. Enforcement

Amendments in section 4 augment EPA's enforcement authority under current law. The Administrator is provided new authority to issue administrative orders in addition to existing authority to initiate civil proceedings against public water systems which are out of compliance with drinking water standards in non-primacy States. The Administrator is given the authority to issue administrative orders in primacy States, if a delegated State fails to act against non-complying public water systems within 30 days of notification by the Administrator.

Administrative orders do not take effect until notice and opportunity for public hearing and if the order is issued to a public water system in a primacy State, the Administrator and the State are given the opportunity to confer. Violators of administrative orders are subject to a penalty of up to $25,000 per day of violation. The Administrator is authorized to assess penalties of up to $5,000 per violation after opportunity for a hearing. The Administrator must initiate a civil action to collect penalties in excess of $5,000 per violation.

The Agency has initiated only 32 Federal enforcement actions against public water systems under the Safe Drinking Water Act. Civil actions are generally resource intensive, and hence may not be undertaken as readily as enforcement activity is desirable. It is anticipated that the administrative order authority will increase actions taken against violators and improve compliance with the Act. This additional authority is not intended to substitute for, or discourage the use of civil suits in cases where this course of action is warranted and appropriate. The intent is to provide the Administrator with an effective administrative legal mechanism for expediting compliance with the law.

Section 5. Public notification

The provision for public notification of violations under current law have been criticized for being burdensome to water suppliers, confusing to the public, and poorly enforced by delegated States and EPA in non-primacy States.

The amendments in section 5 require the Administrator to revise public notification regulations within one year of enactment. Revised notification requirements will distinguish between intermittent, frequent, and continuous violations and take into account any potential adverse health effects to those served by the system. The intent of this change is to distinguish between monitoring infractions as opposed to violations of MCLs or other violations which may affect public health. Current law requires the same notification procedures be followed in both cases. Streamlined regulations should improve compliance with notification requirements and provide the public with more meaningful information in the case of violations.

Section 6. Variances

Section 1415 of the Act provides that variances from national drinking water regulations can be granted by States with primary enforcement responsibility for public water systems. Variances can be granted to systems, if, because of the characteristics of the raw water sources which are reasonably available, the systems cannot meet the requirements respecting the maximum contaminant levels despite the application of the best technology, treatment techniques, or other means which the Administrator finds are generally available (taking costs into consideration). This same authority is available to the Administrator in States which do not have primacy.

Under this bill, EPA is required to propose and promulgate a finding of best available technology, treatment techniques or other means available for purposes of section 1415.

The best available technology specified under section 1412 for standard setting purposes may not be economically or technologically available to smaller systems or to systems with unusual physical conditions. EPA is thus required to promulgate a best available technology under section 1415 considering the number of persons served by the system, other physical conditions related to engineering feasiblility, and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. For large metropolitan and regional systems, the best available technology under section 1415 will be the same best available technology as specified under section 1412.

For systems that do not serve large populations or for systems with unusual physical conditions, a best available technology which is different from that specified in section 1412 may be appropriate.

Section 7. Exemptions

Sec. 1416 provides primacy States, or the Administrator in nonprimacy States, the authority to grant exemptions from national drinking water standards to public water systems based upon certain factors related to the economic condition of a system. The amendments require that systems operating under exemptions from existing regulations must come into compliance within one year of enactment. Exemptions may be granted by States or the EPA for a period not to exceed three years if the system demonstrates; that it cannot meet the standard without capital improvements, it has entered into a financial agreement for necessary improvements, it is being incorporated into a regional system and it is taking all practicable steps to meet the standard. Two year extensions of exemptions are available to systems supplying less than 500 service connections if the State or EPA makes a finding that the system continues to meet these conditions.

Section 8. Monitoring

This section establishes a mandatory monitoring program for unregulated contaminants. Within 18 months of enactment, the Administrator is required to develop regulations requiring all public water systems to monitor for unregulated contaminants. Regulations may vary for different systems based on the population served, source of supply and the likelihood of finding certain contaminants. Regulations shall include a list of contaminants for which all systems are to monitor the criteria for deletion of any contaminant from monitoring requirements for a single public water system. A primacy State must show cause for deletion of a contaminant for an individual system according to such criteria, based upon a system-by-system assessment of the likelihod of finding specific contaminants. The presence of synthetic organic chemicals and other contaminants may vary depending upon such factors as geologic conditions and past and present chemical use patterns in a particular area. States may choose to use such information to tailor their monitoring programs with the approval of the Administrator.

Persons served by the system and EPA will be notified of the availability of the results of the monitoring program.

Systems supplying less than 150 service connections are to provide samples to the delegated State or EPA for testing, according to EPA rules. Thirty million dollars are authorized to pay for one-time monitoring for these systems.

If a State can demonstrate that it has conducted an equivalent monitoring program after January 1, 1983, the Administrator may waive Federal monitoring requirements.

Section 9. Technical assistance

Small systems have had a chronic problem in complying with national drinking water standards. This is due in large part to a lack of technical expertise. The noncompliance situation may worsen with the issuance of standards required by these Amendments. Technical assistance programs, run primarily by the States, have been productive in the past in providing small systems with much needed aid. Section 9 provides a $5 million authorization per year for technical assistance to small systems. Such assistance may be in the form of training programs, "circuit rider" programs or other activities which will facilitate small system compliance.

Section 10. Tampering with public water systems.

Current law does not provide for Federal intervention in actual or threatened incidences of international contamination of public water systems. A Federal presence would be helpful in enhancing protection for community water supplies from criminal tampering. Section 10 provides for criminal penalties for persons who attempt to or threaten to tamper with a public water system with the intention of harming persons. Tampering can result in a fine of $50,000 and/or 5 years imprisonment, while attempted tampering can result in a $20,000 fine and/or 3 years imprisonment.

Section 11. Restrictions on undeground injection of hazardous waste and regulation of State programs

This section establishes a prohibition on the disposal of hazardous waste into or above a formation which contains an underground source of drinking water (USDW) within one-quarter mile of the injection well bore. This constitutes a Federal ban on all Class IV wells, as currently defined in 40 C.F.R. Section 144.6(d), except for wells, that are exempted under 40 C F.R. 144.13(c). Injection of contaminated ground water into aquifer from which it was withdrawn may be allowed as a part of an approved clean-up, removal or remedial action under the Solid Waste Disposal Act of the Comprehensive Environmental Response, Compensation and Liability Act. This prohibition is to take effect six months after enactment except in States where identical prohibitions are already in effect.

The bill also addresses Class I activities which involve injection of hazardous and non-hazardous waste below a USDW. EPA estimates that Class I injection is the method for disposal of about 57 percent of the hazardous waste disposed of annually in the U.S. Current EPA regulations require pressure monitoring within the injection well annulus in order to provide an early warning of any leak that might develop in the well casing. Internal pressure monitors will not provide an indicaiton of a leak into overlying USDWs

from other mechanical failures or hydrogeologic disturbances. The Committee heard testimony from UIC State program representatives and industry witnesses indicating the need for ground water monitoring in some cases and the need for flexibility in making such site-by-site determinations. This section requires EPA to amend current UIC regulations to require ground water monitoring, in such a way to provide the earliest possible detection of migration into or in the direction of an USDW unless the EPA or the delegated State authority concludes, on the basis of the applicant's demonstration, that monitoring is not necessary because no potential exists for migration from the injection zone into a USDW in quantities that may be harmful to human health and the environment.

This provision is not intended to modify requirements for annulus and other types of monitoring which provide a fundamental check on the mechanical integrity of the well under existing EPA and State regulations.

The required change in regulations would be an additional requirement to make a showing to the State or EPA that hydrogeologic and injection conditions are such that ground water monitoring is not necessary because no migration will occur from the injection zone. This section also requires that EPA submit a report on practices of disposal of non-hazardous waste into or above a USDW. Such practices are classified as Class V under the UIC program. The Class V category includes diverse types of non-hazardous disposal including industrial and agricultural drainage, and air conditioning return flows. The Committee heard testimony and has been provided additional information on the existing and potential ground water contamination problems associated with Class V practices. EPA has not issued specific regulations for design, construction, installation, or siting requirements for Class V wells as necessary to protect USDWs. This report, which will be based on State surveys of Class V wells now in progress, will be useful in determining the need for minimum Class V requirements. The report to the Committee is to consist of a categorization of different types of Class V wells, an identification of problems associated with such wells, and recommendations for minimum requirements.

This section also includes an amendment to three provisions of Part C of the Safe Drinking Water Act relating to the regulation of underground injection of brine which is brought to the surface from natural gas storage operations.

Current law limits Federal regulation of State UIC programs which might interfere with or impede the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production unless such requirements are essential to assure that USDWs will not be endangered by such injection.

This amendment applies the same regulatory limitations to the reinjection of brine which is brought to the surface with stored gas. The Committee makes this change for purposes of consistency and it, in no way, alters or affects prescribed duties to assure that USDWs will not be endangered by an underground injection.

Section 12. Enforcement

This section amends enforcement provisions of the underground injection control program and conforms with changes made in section 4 of the bill pertaining to enforcement of national primary drinking water standards. The Administrator is authorized to issue administrative orders in non-primacy States and in primacy States if the State fails to act on a violation within 30 days of notice by the Administrator. Civil penalties of up to $25,000 per day of violation may be imposed.

Section 13. Critical aquifer protection area demonstration program

Section 13 establishes procedures for the development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas within designated sole or principal source aquifers. There are currently 17 designated aquifers and 16 applications for designation are pending.

Any State, municipal, local, or interstate government or planning entity may submit an application for selection of a critical aquifer protection areas for a demonstration program. The applicant would have the option of also submitting a plan for managing the critical area for protection of the aquifer. Any plan must include a certification by the Governor that the plan is consistent with State laws, regulations, and policies.

Within 12 months of enactment, the Administrator is required to establish the criteria for delineating critical aquifer protection areas. These criteria will be based on several factors including recharge patterns, the dependence of the population on the aquifer as a drinking water source, the vulnerability of the aquifer to contamination, and the economic, social, and ecological impacts to the area of groundwater quality degradation.

After receipt of an application, the Administrator will have 120 days to decide whether the proposed cricitical protection area satisfies these criteria and whether a demonstration program would serve as a useful model. If so, the Administrator may enter into cooperative agreement with the applicant to plan and implement measures to protect the critical area. The Administrator should give special consideration to areas for which a water quality management plan for a sole or principal source aquifer has previously been approved by the Administrator. If the applicant submits a plan with the initial application that is approved by the Administrator, the agreement may be limited to program implementation. The Administrator is authorized to provide a grant covering 50 percent of the planning and implementation costs.

The plans may include a variety of measures to prevent contamination of the aquifer and preserve the recharge capability of the critical protection area. The demonstration programs should encompass a range of approaches to discourage or avoid activities within critical areas that could contaminate the aquifers, to encourage the use of the best management practices to prevent contamination, and, where appropriate, to develop regulations on siting, design, and other parameters. However, the Federal funds may not be used to carry out activities required by other sections of

the Safe Drinking Water Act or other Federal laws nor to clean up individual sources of contamination.

The authorized level of funding for the demonstration program is $15,000,000 for each of the fiscal years 1986, 1987, 1988 and 1989, with a limit of $2,000,000 per year for any designated sole source aquifer.

Section 14. Authorization of appropriations

Section 14 contains general authorizations of appropriations to support the main provisions of the Safe Drinking Water Act for FY 85 through FY 89. The authority of the Administrator to guarantee supplies of water treatment chemicals in Section 1441(f) of the Act is also extended in this section. Funds are authorized according to the following schedule:

	Fiscal year 1985	Each year fiscal year 1986 thru fiscal year 1989
Sec. 1441(f) (for subsection 1442(a)(a)(B)—EPA response to emergency situations affecting public water systems)	$9,600,000	$11,300,000
Sec. 1442(f) (general authorization for Sec. 1442 activities)	42,000,000	47,000,000
Sec. 1443(a)(7) (State program grants)	40,000,000	45,000,000
Sec. 1443(b)(5) (State UIC grants)	25,000,000	28,000,000
Total	116,600,000	131,300,000

Section 15. Judicial review

This amendment revises the provisions of section 1448(a) of the Safe Drinking Water Act governing judicial review of Agency actions.

As amended, section 1448(a)(1) provides that a petition for review of a generally applicable regulation may be filed in the United States Court of Appeals for the District of Columbia Circuit or in any other U.S. Court of Appeals for a circuit in which the petitioner resides or transacts business that is directly affected by such regulation, and a petition for review of any other regulation, order, or determination may be filed in the court of appeals for any appropriate circuit. Under current law petitions for review of generally applicable regulations may only be filed in U.S. Court of Appeals for the D.C. Circuit.

In addition, the period within which a petition for review must be filed is changed from 45 days to 120 days from the date of the action with respect to which review is sought.

New section 1448(a)(2) establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which an agency action is reviewed when petitions for review have been filed in two or more courts of appeals.

Following the selection of a single court of appeals other courts in which petitions have been filed are directed to promptly transfer such petitions to the court in which the agency record has been filed. Notwithstanding the random selection procedure, any court in which a petition has been filed retains the power to transfer the

petition to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

Conforming changes are made in Section 1448(b).

Evaluation of Regulatory Impact

In compliance with section 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

Most of the provisions of the reported bill are more specific applications of regulatory authority already available to the Administrator under existing provisions of the Safe Drinking Water Act. In some cases existing rulemaking authority is augmented by statutory deadlines for meeting objectives of the Act.

Section 8 of the bill requires the Administrator to establish rules for a new program of monitoring for unregulated contaminants.

Section 13 of the bill requires the Administrator to identify, by rule, critical aquifer protection areas within sole source aquifers designated under existing authority of the Administrator pursuant to section 1424(e) of the Safe Drinking Water Act.

Hearings

The Subcommittee on Toxic Substances and Environmental Oversight held three days of hearings on S. 2649. The hearings were held in Washington, D.C. on May 14; June 11 and 26, 1984.

Rollcall Votes

Section 7(b) of Rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes be noted in this report. There were no rollcall votes taken during the committee's consideration of this bill. The bill was ordered reported by voice vote on September 26, 1984.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 26, 1984.

Hon. Robert T. Stafford,
Chairman, Committee on Environment and Public Works, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2649, the Safe Drinking Water Act Amendments of 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudoph G. Penner, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 2649.

2. Bill title: Safe Drinking Water Act Amendments of 1984.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, September 26, 1984.

4. Bill purpose: S. 2649 would authorize appropriations to the Environmental Protection Agency (EPA) for safe drinking water programs for fiscal years 1985–1989, including grants to states for emergency actions, underground injection control, and public system supervision. The bill would authorize appropriations of $5 million for each of the fiscal years 1985 through 1989 for technical assistance to small public water systems. The bill would also authorize the appropriation of $30 million in fiscal year 1986 to be used by the EPA to develop regulations requiring public water systems to monitor for unregulated contaminants. The $30 million could also be used to offset EPA's costs of performing analysis on samples submitted by smaller systems. Finally, S. 2649 would provide a total of $60 million over five years to establish a demonstration program for sole source acquifer protection.

Public Law 98–371, the Department of Housing and Urban Development-Independent Agencies Appropriation Bill, appropriated to the EPA approximately $62 million for safe drinking water programs and an additional $8.6 million for groundwater programs in fiscal year 1985.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1985	1986	1987	1988	1989
Authorization level	121.6	181.3	151.3	151.3	151.3
Less: Existing appropriation	−70.6				
Net authorization level	51.0	181.3	151.3	151.3	151.3
Estimated outlays	33.0	140.0	147.0	151.0	151.3

Note: The costs of this bill fall within budget function 300.

Base of Estimate: Authorization levels are those stated in the bill. For purposes of this estimate, the entire amounts authorized by the bill are assumed to be appropriated for each fiscal year. It is further assumed that all grant funds authorized and appropriated will be disbursed by the EPA, and that states will meet the necessary matching requirements. Outlays are estimated on the basis of historical spending patterns for drinking water programs.

6. Estimated cost to State and local governments: CBO has not completed its estimate of the costs to State and local governments.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 18, 1984, the Congressional Budget Office prepared a cost estimate for H.R. 5959, the Safe Drinking Water Act Amendments of 1984. Differences between that estimate and this analysis reflect the differing authorization levels.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Changes in Existing Law

In the opinion of the Committee it is necessary to dispense with the requirements of Section 12 of Rule XXIV of the Standing Rules of the Senate in order to expedite the business of the Senate.

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Calendar No. 1294

98TH CONGRESS
2d Session

SENATE

REPORT
98-646

ESTABLISHING THE CONNECTICUT COASTAL NATIONAL WILDLIFE REFUGE AND THE ATCHAFALAYA NATIONAL WILDLIFE REFUGE

SEPTEMBER 29 (legislative day, SEPTEMBER 24), 1984.—Ordered to be printed

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Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany H.R. 5464]

The Committee on Environment and Public Works, to which was referred the Act (H.R. 5464) to establish the Connecticut Coastal National Wildlife Refuge, and for other purposes having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 5464 is to establish the Connecticut Coastal National Wildlife Refuge and to establish the Atchafalaya National Wildlife Refuge.

LEGISLATIVE BACKGROUND

On May 11, 1984, Senators Weicker and Dodd introduced S. 2668, legislation to establish the Chimon Island National Wildlife Refuge in the State of Connecticut. The House of Representatives included a provision to establish the Atchafalaya National Wildlife Refuge in H.R. 5464, a companion House bill, during a meeting of the House Committee on Merchant Marine and Fisheries on September 5, 1984. The House passed H.R. 5464 on September 11, 1984. The Subcommittee on Environmental Pollution held a hearing on S. 2668 and H.R. 5464 as passed by the House (and referred to the Environment and Public Works Committee) on September 19, 1984. The Subcommittee received favorable testimony from the Depart-

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ment of the Interior, Senator Weicker, and Representatives McKinney and Ratchford.

On September 26, 1984, the Committee on Environment and Public Works considered H.R. 5464. A new title II was substituted for section 6, and the bill, as amended, was ordered reported to the Senate by unanimous voice vote.

Background and Need for the Legislation

CONNECTICUT COASTAL NATIONAL WILDLIFE REFUGE

The State of Connecticut was one of the first areas of the country to be settled, and the natural areas of the State have been successively converted for forestry, agriculture and, most recently, industrial and recreational development. As a result, very few areas of the State remain in a natural or relatively natural state. This is particularly true of the coastal areas of the State, which are prime areas for development because of their proximity to the New York metropolitan area. The islands and coastal areas included in this legislation contain some of the last remnants of relatively undisturbed land in Connecticut. As such, they provide important habitat for a number of species endemic to the area, many of which are rare along the New England Coast.

Chimon Island, a 70 acre island located in Long Island Sound approximately 1½ miles off Norwalk, is the largest heron rookery in Connecticut and one of the largest wading bird colonies on the northern seaboard. Nesting species include great, snowy, and cattle egrets, black-crowned and yellow-crowned night herons, little blue herons, and glossy ibis. Milford Point is a 7-acre barrier spit located at the mouth of the Housatonic River. It is one of the few nesting areas remaining for piping plovers, which require sandy beaches free of high human use and disturbance. Falkner's Island is a small, isolated island located several miles off Sachem Head near Guilford, Connecticut. It supports Connecticut's only significant breeding population of roseate terns and also supports 70 percent of the State's nesting population of common terns. Falkner's Island is owned by the U.S. Coast Guard. Sheffield Island is a small island located approximately one mile west of Chimon Island. It has small nesting populations of herons and great black-backed gulls. Professional biologists have indicated that proper management of this island could enhance its potential as a breeding area. Together, these areas represent a major natural area resource in a urbanized area. There is not only a need in the area for habitat for diminishing species of shore and wading birds, but also a need to maintain areas for nature observation and wildlife oriented recreation.

ATCHAFALAYA NATIONAL WILDLIFE REFUGE

The Atchafalaya Basin has been described as the greatest river swamp in the United States. It encompasses more than 500,000 acres of wetlands that may produce as much wildlife as any area in the country. It provides habitat for a diversity of wildlife, including herons, egrets, and other wading birds; mallards, wood ducks, and countless waterfowl; black bears, deer, bobcat, muskrat, and other mammals; and a large population of alligators. From its waters

comes the Louisiana crawfish, as well as bass, catfish, and other fish.

For a number of years, there has been a dispute over the conservation of the Basin. Flood control, agriculture, energy development, recreation, and other interests in the Basin were difficult to reconcile. Recently, however, all of the parties involved developed an agreement that resolves the major disputes. The agreement, which is incorporated in a feasibility study developed by the Corps of Engineers for the Basin, specifies flood control measures, water flow rates, and the purchase of flowage and conservation easements designed to keep the basin in a natural state while providing navigation and flood protection for surrounding communities.

The agreement also calls for the acquisition and management of 90,000 acres within the Basin for public access. The Dow Chemical Company has donated 40,000 acres. The acquisition of the remaining 50,000 acres is to be split between the State of Louisiana and the Federal Government. Under the agreement, all of the public access lands are to be managed by the Louisiana Department of Wildlife and Fisheries. The State has recently acquired approximately 10,000 acres and has plans to acquire additional lands in the near future.

In the 1984 Supplemental Appropriations Act passed by the Congress and signed into law by the President on August 22, 1984, $10,000,000 out of the Land and Water Conservation Fund was appropriated to the Fish and Wildlife Service to acquire lands and waters, or interests therein, in the Atchafalaya Basin in accordance with statutory authority applicable to the Fish and Wildlife Service, including the Fish and Wildlife Act of 1956. The Appropriation Act, however, did not specify the status of the acquired land or provide any guidance to the Fish and Wildlife Service relative to management of the area. For this reason, legislation clarifying the status of the lands to be acquired is needed.

Section-by-Section Analysis

TITLE I

Section 101

Section 101 of the legislation states the congressional findings of the legislation relative to the Connecticut Coastal National Wildlife Refuge, defining the areas in terms of their unique natural resources. Section 101 also states the purposes for which the Connecticut Coastal Refuge is established. These purposes include the conservation and management of fish and wildlife populations and habitats to encourage natural diversity and to enhance the populations of herons, egrets, terns, and other shore and wading birds. The purposes also include the fulfillment of international treaty obligations of the United States with respect to fish and wildlife and their habitats and to provide opportunities for scientific research, environmental education, and fish and wildlife oriented recreation.

The Committee recognizes that these areas will be prized for their open space values in a crowded urban area and encourages

the Service to provide, where compatible with the stated purposes, opportunities for outdoor recreation and nature observation.

Section 102

Section 102 defines the terms used in sections 101 through 105 of the legislation. The term "Refuge" means the Connecticut Coastal National Wildlife Refuge. The term "Secretary" means the Secretary of the Interior, who manages all of the National Wildlife Refuges through the U.S. Fish and Wildlife Service. The term "selection area" means the lands and waters of Chimon Island, Milford Point, Falkner's Island and Sheffield Island in the State of Connecticut.

Section 103

Section 103 provides for the establishment of the Connecticut Coastal National Wildlife Refuge. Within 90 days after the effective date of the Act, the Secretary is to designate those lands he considers appropriate for inclusion in the Refuge and prepare a detailed map of the boundaries of the refuge. Notice of the availability of the map is to be published in the Federal Register. The Secretary may, at any time, make minor revisions in the boundaries to facilitate acquisition or management of the area.

Following the designation of the boundaries of the Refuge, the Secretary is to acquire the land within the boundaries. Section 3 also provides for the transfer of jurisdiction over Falkner's Island from the Coast Guard to the U.S. Fish and Wildlife Service. The Coast Guard will retain jurisdiction over, and responsibility for, the lighthouse on Falkner Island. When sufficient lands have been acquired so that the area can be effectively managed as a National Wildlife Refuge, the Secretary shall establish the refuge by notice in the Federal Register.

Section 104

Section 104 provides that the Secretary shall administer the Connecticut Coastal National Wildlife Refuge in accordance with the provisions of the National Wildlife Refuge System Administration Act and other applicable laws.

Section 105

Section 105 provides for an authorization of $2,500,000 to be appropriated from the Land and Water Conservation Fund for refuge acquisition. The funds are to remain available until expended.

TITLE II

Section 201

Section 201(a) of the legislation states the congressional findings relative to the Atchafalaya National Wildlife Refuge. The findings emphasize the importance of the area's forested wetlands as habitat for a diversity of wildlife.

Section 101(b) states the purposes for which the Refuge is established, including the conservation and management of fish and wildlife; the fulfillment of international treaty obligations of the United States with respect to fish and wildlife; and to provide op-

portunities for scientific research, environmental education, and fish and wildlife oriented recreation, including hunting and fishing, trapping, birdwatching and nature photography.

Section 202

Section 202 defines the terms used in sections 201 through 205 of the bill. The term "Refuge" means the Atchafalaya National Wildlife Refuge. The term "Secretary" means the Secretary of the Interior, who manages all of the National Wildlife Refuges through the U.S. Fish and Wildlife Service. The term "selection area" means those lands and waters that are depicted on the map dated September 21, 1984, on file with the U.S. Fish and Wildlife Service which are not owned by Louisiana and which are available from willing sellers.

Section 203

Section 203 provides for the establishment of the Atchafalaya National Wildlife Refuge. Within 180 days after the effective date of the Act, the Secretary with the concurrence of the State of Louisiana is to designate those lands he considers appropriate for inclusion in the Refuge and prepare a detailed map of the boundaries of the Refuge. Notice of the availability of the map is to be published in the Federal Register. The Secretary may, at any time, make minor revisions in the boundaries to facilitate acquisition or management of the area.

Following the designation of the boundaries of the Refuge, the Secretary is to acquire the land within the boundaries. Federal funds in the amount of $10,000,000 are provided for acquisition by the 1984 Supplemental Appropriations Act (P.L. 98-386) passed by the Congress and signed into law by the President on August 22, 1984.

This section authorizes the Secretary to include in any transfer of property to the United States, pursuant to this Act, language requiring the United States in the event that the property is no longer acquired for fish and wildlife conservation and prior to any sale, exchange or other transfer of the property acquired, to first offer such property to the vendors, their heirs, successors or assigns at the same price then being offered by any third party, which price shall in no event be less than the current fair market value.

Section 204

Section 204 provides that the Secretary shall administer the Atchafalaya National Wildlife Refuge in accordance with the provisions of the National Wildlife Refuge System Administration Act and other applicable laws, rules and regulations. However, the Secretary is instructed to enter into a cooperative agreement with the State of Louisiana which provides for the management of the Refuge by the State. Such management by the State would not diminish in any way the responsibilities of the Secretary, as the primary administrator of the refuge, to ensure that activities on the refuge are compatible with the purposes for which the refuge is established.

In carrying out the provisions of this section, it is expected that Louisiana will submit an annual operating plan for approval by the U.S. Fish and Wildlife Service. The Fish and Wildlife Service shall annually review the State operating plan and shall not approve the plan unless it is compatible with the purposes for which the refuge lands were added to the National Wildlife Refuge System. Further, after approval of the plan, the day-to-day management of the Refuge by Louisiana shall comply with this compatibility test.

The annual operating plan may provide for state management of hunting, fishing, trapping, birdwatching, nature photography and other compatible wildlife-oriented research and recreational uses, subject to restrictions in applicable Federal and State laws. However, the specific requirements of the refuge manual need not apply.

Except for permits required for fish and wildlife related activities included in the annual operating plan, Louisiana shall refer to the Fish and Wildlife Service Regional Director all applications relative to permits, easements, rights-of-way and all other proposed non-wildlife uses of the Refuge. With such referral, Louisiana shall indicate its recommendations as to the application. However, the Fish and Wildlife Service retains the authority to grant or deny the applications.

Section 205

Section 205 clarifies that the Refuge, notwithstanding State management, is to be treated as a fee area under the Refuge Revenue Sharing Act so that the parish in which the area is located is eligible for payments under that Act.

Concomitantly, all monies received from products of the land or other privileges granted on the Refuge shall accrue to the Fish and Wildlife Service for deposit into the National Refuge Revenue Sharing Fund.

Section 206

Section 206 provides that the Act shall take effect on October 1, 1984, or on the date of its enactment, whichever date is later.

Hearings

The Subcommittee on Environmental Pollution held a hearing on September 19, 1984, in Washington, D.C.

Rollcall Votes

Section 7(b) of Rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes be noted in this report. On September 26, 1984, the Committee considered H.R. 5464. No rollcall votes were taken. The bill was ordered reported by unanimous voice vote.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of

the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 28, 1984.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 5464, an act to establish the Connecticut Coastal National Wildlife Refuge.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5464.

2. Bill title: An act to establish the Connecticut Coastal National Wildlife Refuge.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, September 26, 1984.

4. Bill purpose: H.R. 5464 would provide for the establishment of the Connecticut Coast National Wildlife Refuge. The act would require the Secretary of the Interior to designate appropriate lands for inclusion in the refuge and to acquire such lands by donation, purchase or exchange. For this purpose the act would authorize the appropriation of $2.5 million from the Land and Water Conservation Fund.

In addition, H.R. 5464 directs the Secretary to acquire land, water, or interests in the Atchafalaya Basin with funds appropriated under Public Law 98–396. Once sufficient property has been acquired, the Secretary shall establish a National Wildlife Refuge. Such property would be managed by the State of Louisiana after a cooperative agreement is entered into by the state and the U.S. Fish and Wildlife Service. At that time, the site shall be eligible to receive payments in lieu of taxes under the Refuge Revenue Sharing Act.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1985	1986	1987	1988	1989
Estimated authorization level	2.6	0.1	0.1	0.1	0.1
Estimated outlays	1.7	0.7	0.4	0.1	0.1

The costs of this bill fall within budget function 300.

Basis of estimate: For purposes of this estimate it is assumed that the entire amount authorized for the acquisition of Connecticut coastal areas will be appropriated for fiscal year 1985. It is assumed that the $2.5 million authorized will be sufficient to acquire

all property specified in the bill, and that the acquisitions will be made over a three-year period beginning in 1985. Estimated authorization levels and outlays include a total of approximately $100,000 a year, beginning in fiscal year 1985, for operation and maintenance of the Connecticut refuge and payments in lieu of taxes under the Refuge Revenue Sharing Act for the Connecticut refuge and for Atchafalaya Basin.

Acquisition of land within the Atchafalaya Basin will result in no additional costs to the government, since funds to be used have been appropriated.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 6, 1984, CBO prepared an estimate on H.R. 5464, as ordered reported by the House Committee on Merchant Marine and Fisheries. The estimated cost of two versions is the same.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C. G. Nuckols for (James L. Blum, Assistant Director for Budget Analysis).

Evaluation of Regulatory Impact

In accordance with section 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the bill. It is the opinion of the Committee that this bill will impose no new regulatory burden.

Changes in Existing Law

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are to be shown. There are no changes made to existing law by this bill.

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